IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Bail Appl..No. 3661 of 2007()

O.R.NO.2/07 OF NEDUMKAYAM FOREST STATION.

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PETITIONER

K.M.SHAFEEQUE, S/O. MUHAMMEDALI,
ERANHIKKODE, KUNDUTHODU P.O.

BY ADV. SRI.TITUS MANI
SRI.SURAJ SUKUMARAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. FOREST RANGE OFFICER,
NEDUMKAYAM FOREST STATION, KARULAI.

BY D.G.P. SRI. P.G. THAMPI.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3661 OF 2007

Dated this the 22nd day of June, 2007

ORDER

Application for anticipatory bail. The petitioner apprehends arrest in a crime registered as O.R.No.2/07 of the Nedumkayam Forest Station under the provisions of the Wild Life Protection Act. According to the petitioner, he is absolutely innocent. On an erroneous impression, the forest officials are proceeding against him. He had approached the learned Sessions Judge for anticipatory bail. After he approached the learned Sessions Judge, a report was filed arraying him as one of the accused. When the O.R. was registered, no named person was shown as accused. According to the petitioner, there is no satisfactory material on which he got arrayed as an accused.

2. The learned Director General of Prosecution submits that there are no circumstances whatsoever to justify the

invocation of the jurisdiction under Sec.438 of the Cr.P.C. The learned Public Prosecutor submits that on 11/5/07 a gun shot was heard from the dense forest. The officials who were on patrol duty attempted to trace the culprits. The culprits allegedly sped away in a jeep. In that jeep meat of a sambar deer which the miscreants had shot and killed was available. To avoid detection of culpability, such meat was allegedly thrown out of the jeep in which the miscreants sped away. The forest officials who chased the jeep could get a glimpse of three persons who were available in the jeep. Their names were not known. The jeep number was noted. The seizure mahazar does not contain their names. But, working on that clue, one of the Foresters one Mr. Sheriff had conducted the investigation and he had specifically identified the three persons who were available in the jeep. The petitioner herein is arrayed as the 2nd accused on the basis of such identification by the said Forester Sheriff. The report of the Forester was obtained and it was thereafter that the petitioner along with others was arrayed as an accused.

3. The learned D.G.P. submits that the investigation is at an early stage. The petitioner may not be permitted to arm

himself with an order of anticipatory bail at this early stage. Available inputs indicate that the petitioner was present. His arrest and interrogation is absolutely essential to unearth all the details of the crime committed. If the petitioner were permitted to arm himself with an order of anticipatory bail, that would effectively frustrate the investigation and make it impossible for the officials to raise a proper indictment. The seriousness of the crime may not be lost sight of by this Court, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. The powers under Sec.438 of the Cr.P.C. are to be invoked sparingly and in exceptional cases only in aid of justice. An order of anticipatory bail virtually transforms a non-bailable offence under law into a bailable offence. Sufficient, satisfactory and compelling reasons must be shown to exist by the petitioner who seeks the invocation of such extraordinary equitable discretion of this Court. Even the fact that the petitioner, had he come before this Court with an application for anticipatory bail may have been granted regular bail when he appears and applies for bail, is no reason for this court to mechanically invoke the powers under Sec.438 of the Cr.P.C. The investigational requirements

cannot be lost sight of.

5. It is in this context that I scanned through the entire petition filed by the petitioner to ascertain whether there is any allegation of mala fides against the forest officials. Significantly, I am unable to find any such allegation at all. Where the court is satisfied that the powers, which the officials have under law, to arrest and detain a citizen are about to be misused for objectionable and mala fide purposes, certainly the jurisdiction under Sec.438 of the Cr.P.C. can and ought to be invoked. But here is a case where such allegation of mala fide is not raised at all.

6. At the moment, I need not embark on a detailed discussion as to whether the report of the Forester Sheriff who was available in the jeep and who had allegedly seen the three miscreants who were proceedings in the jeep can be accepted or not. That exercise can certainly be postponed to a later stage. I am certainly not satisfied, in the facts and circumstances of this case, that the powers under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. This, I am satisfied, is certainly a fit case where the petitioner must co-operate with the Investigators and appear before the Investigators or the learned

Magistrate having jurisdiction and then seek bail in the regular and ordinary course. If he so appears and applies for regular bail before the learned Magistrate, after giving sufficient prior notice to the Prosecutor in charge of the case, needless to say, such application must be disposed of on merits in accordance with law and expeditiously.

7. With the above observations, this Bail Application is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge